

House Bill 979

By: Representative Setzler of the 35th

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 8 of Title 12 of the Official Code of Georgia Annotated, relating to waste management, so as to change certain provisions relating to definitions relative to hazardous waste management; to change certain provisions relating to variances; to change certain provisions relating to criteria for property to qualify for limitation of liability; to change certain provisions relating to limitation of expenses following approval of a corrective action plan; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 8 of Title 12 of the Official Code of Georgia Annotated, relating to waste management, is amended by striking paragraphs (2), (9), (10), and (20) of Code Section 12-8-62, relating to definitions relative to hazardous waste management, and inserting in lieu thereof the following:

"(2) 'Designated hazardous waste' means any solid waste identified as such in regulations promulgated by the board. The board may identify as 'designated hazardous waste' any solid waste which the board concludes is capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed, based on the factors set forth in regulations promulgated by the administrator of the United States Environmental Protection Agency pursuant to the federal act which are codified as 40 C.F.R. Section 261.11(a)(3), in force and effect on ~~February 1, 1996~~ February 15, 2006, if such solid waste contains any substance which is listed on any one or more of the following lists:

(A) List of Hazardous Constituents, codified as 40 C.F.R. Part 261, Appendix VIII, in force and effect on ~~February 1, 1996~~ February 15, 2006;

(B) Ground-water Monitoring List, codified as 40 C.F.R. Part 264, Appendix IX, in force and effect on ~~February 1, 1996~~ February 15, 2006;

(C) List of Hazardous Substances and Reportable Quantities, codified as 40 C.F.R. Table 302.4, and all appendices thereto, in force and effect on ~~February 1, 1996~~ February 15, 2006;

(D) List of Regulated Pesticides, codified as 40 C.F.R. Part 180, in force and effect on ~~February 1, 1996~~ February 15, 2006;

(E) List of Extremely Hazardous Substances and Their Threshold Planning Quantities, codified as 40 C.F.R. Part 355, Appendix A, in force and effect on ~~February 1, 1996~~ February 15, 2006; or

(F) List of Chemicals and Chemical Categories, codified as 40 C.F.R. Part 372.65 in force and effect on ~~February 1, 1996~~ February 15, 2006."

"(9) 'Hazardous constituent' means any substance listed as a hazardous constituent in regulations promulgated by the administrator of the United States Environmental Protection Agency pursuant to the federal act which are in force and effect on ~~February 1, 1996~~ February 15, 2006, codified as Appendix VIII to 40 C.F.R. Part 261—Identification and Listing of Hazardous Waste.

(10) 'Hazardous waste' means any solid waste which has been defined as a hazardous waste in regulations promulgated by the administrator of the United States Environmental Protection Agency pursuant to the federal act which are in force and effect on ~~February 1, 1996~~ February 15, 2006, codified as 40 C.F.R. Section 261.3 and any designated hazardous waste."

"(20) 'Solid waste' means solid waste as defined by regulations promulgated by the administrator of the United States Environmental Protection Agency pursuant to the federal act which are in force and effect on ~~February 1, 1996~~ February 15, 2006, codified as 40 C.F.R. Sections 261.1, 261.2(a)-(d), and 261.4(a)."

SECTION 2.

Said chapter is further amended by striking subsection (a) of Code Section 12-8-69, relating to variances, and inserting in lieu thereof the following:

"(a)(1) Unless variances are prohibited by the federal act or the standards, rules, and regulations promulgated thereunder, the director may grant variances from the requirements of this article or the rules and regulations effective under this article whenever the director finds that compliance with any provision of this article or any standard, rule, or regulation will result in an arbitrary and unreasonable taking of property or will result, in effect, in the closing and elimination of any lawful business, occupation, or activity without sufficient corresponding benefit or advantage to the public, provided that no variance shall be granted where the effect of a variance will permit the

continuation of a condition which poses an undue present or potential threat to the environment or to the health of humans; provided, further, that any variance so granted shall not be construed so as to relieve any person from any liability imposed by law or rule and regulation.

(2) A variance may be granted under paragraph (1) of this subsection to a site requiring cleanup under the provisions of Article 3 of this chapter for the sole purpose of changing the status of a hazardous waste facility as defined in Code Section 12-8-62. Such a variance shall qualify the property as eligible for a limitation of liability pursuant to Code Section 12-8-205, provided that all conditions of the variance are met. Such a variance shall be granted only when it is demonstrated to the satisfaction of the director that the variance will result in an improved level of protection for human health and the environment than would exist if the variance had not been granted."

SECTION 3.

Said chapter is further amended by striking paragraph (3) of Code Section 12-8-205, relating to criteria for property to qualify for limitation of liability, and inserting in lieu thereof the following:

"(3) The property must not:

(A) Be listed on the federal National Priorities List pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601, et seq.; or

(B) Be currently undergoing response activities required by an order of the regional administrator of the federal Environmental Protection Agency issued pursuant to the provisions of such act; ~~or~~ and

~~(C) Be a hazardous waste facility as defined in Code Section 12-8-62; and"~~

SECTION 4.

Said chapter is further amended by striking paragraph (1) of subsection (b) of Code Section 12-8-207, relating to limitation of expenses following approval of a corrective action plan, and inserting in lieu thereof the following:

~~"(b)(1) For qualifying properties which the director has designated as needing corrective action in accordance with paragraph (8) of subsection (a) of Code Section 12-8-97 where~~
corrective action may be needed in order to certify compliance with risk reduction standards, any party desiring to qualify for a limitation of liability pursuant to this Code section shall submit a prospective purchaser corrective action plan to the division. The corrective action plan shall, at minimum, enumerate and describe in detail those actions

1 planned and proposed to bring any source material or soil found on the qualifying
2 property into compliance with all applicable rules and regulations adopted by the board
3 governing the investigation, cleanup, and corrective action ~~at properties listed on the~~
4 ~~hazardous site inventory~~ in accordance with risk reduction standards. A corrective action
5 plan submitted by a prospective purchaser under this subsection shall be in such form and
6 meet such criteria as established by the board."

7 **SECTION 5.**

8 Said chapter is further amended by adding to Code Section 12-8-207, relating to limitation
9 of expenses following approval of a corrective action plan, new subsections to read as
10 follows:

11 "(f) Any person seeking or obtaining a limitation of liability provided for in this Code
12 section shall not be required to notify the director pursuant to subsection (d) of Code
13 Section 12-8-97 for any source material or releases to soil identified in a prospective
14 purchaser corrective action plan, nor shall a property be listed on the hazardous site
15 inventory due solely to soil or source material set forth in a prospective purchaser
16 corrective action plan, so long as such prospective purchaser corrective action plan is
17 subsequently approved by the director and the corrective action identified in the
18 prospective purchaser corrective action plan is implemented within the time frame required
19 in the director's approval.

20 (g) Upon the director's approval of the prospective purchaser corrective action plan or
21 concurrence with the certification of compliance described in this Code section, whichever
22 first occurs, a property listed on the hazardous site inventory due solely to soil or source
23 material shall be removed from the hazardous site inventory and not be subject to
24 provisions of Code Section 12-8-97. If at any time the corrective action identified in the
25 prospective purchaser corrective action plan fails to be implemented within the time frame
26 required in the director's approval, the director may opt to re-list the property on the
27 hazardous site inventory."

28 **SECTION 6.**

29 All laws and parts of laws in conflict with this Act are repealed.